

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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| Petition of AT&T Services, Inc. for        | ) | WC Docket No. 16-363 |
| Forbearance under 47 U.S.C. § 160(c) from  | ) |                      |
| Enforcement of Certain Rules for Switched  | ) |                      |
| Access Services and Toll Free Database Dip | ) |                      |
| Charges                                    | ) |                      |

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) opposes AT&T’s request for forbearance from a variety of rules governing intercarrier compensation (ICC).<sup>1</sup> While NCTA agrees with AT&T that it is important for the Commission to eliminate incentives for arbitrage by completing the ICC reforms it started in 2011, the preferred method for doing so would be through a comprehensive rulemaking proceeding rather than the piecemeal forbearance AT&T seeks here. Such a proceeding also would be the best way to consider AT&T’s unsubstantiated assertions regarding the level of charges for database queries performed by local exchange carriers (LECs) on toll-free 8YY services. AT&T’s petition does not demonstrate that there is a problem that requires a change in the regulation of these charges, but even if it did, the requested forbearance is not the appropriate solution and would result in inequitable regulation that harms competitive providers.

**INTRODUCTION**

In its petition, AT&T raises concerns with a variety of intercarrier compensation issues that were left unresolved in the Commission’s landmark reform order in 2011.<sup>2</sup> NCTA agrees that while the 2011 order made significant progress in reforming the intercarrier compensation

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<sup>1</sup> Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Sept. 30, 2016) (AT&T Petition).

<sup>2</sup> *Connect America Fund*, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

regime, more work needs to be done to complete the reforms. In particular, we share AT&T's concern regarding the problems attributable to traffic pumping and the various schemes some carriers have used to perpetuate these revenue streams notwithstanding the Commission's reform efforts.<sup>3</sup>

While NCTA generally agrees with AT&T's concern about the need for the Commission to finish its ICC reform efforts, we disagree with AT&T's proposal to address that concern through piecemeal forbearance. As the petition itself demonstrates, piecemeal reform inevitably creates incentives for bad actors to take advantage of any remaining loopholes.<sup>4</sup> The more prudent approach is for the Commission to address these issues in a comprehensive manner.

AT&T also raises concerns about unreasonable charges being imposed for database queries on carriers that provide toll-free calling services.<sup>5</sup> On this issue, AT&T has failed to make the case that any action is warranted at this time. Specifically, AT&T has provided no meaningful evidence that charges for such database queries are unreasonable, nor has it demonstrated that its proposal to forbear from tariffing of those charges is an appropriate solution to its concerns.

**I. THE COMMISSION SHOULD REJECT AT&T'S OVERLY BROAD PROPOSAL TO ELIMINATE ACCESS CHARGES FOR ALL CALLS TO OR FROM CARRIERS ENGAGED IN ACCESS STIMULATION AND INSTEAD PROMPTLY COMPLETE INTERCARRIER COMPENSATION REFORM**

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AT&T asks the Commission to forbear from the tariffing of access charges for tandem switching and tandem-switched transport for all calls to or from LECs engaged in access stimulation. In support of this request, AT&T notes that "access stimulation schemes continue to

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<sup>3</sup> AT&T Petition at 9-11.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 18.

flourish” in today’s marketplace and suggests that its requested forbearance will address the problem.<sup>6</sup> It also suggests that detariffing is warranted because there is nationwide competition for tandem switching and transport services.<sup>7</sup>

NCTA agrees that access stimulation remains problematic, imposing undue costs on consumers and ultimately harming competition. But AT&T framed its forbearance request too broadly by applying it to *all* switching and transport of traffic carried to and from LECs engaged in stimulation schemes.<sup>8</sup> That proposed remedy could eliminate originating and terminating access charges assessed by unaffiliated voice providers handling the non-arbitrated end of a call by a traffic pumping LEC. There is no defensible basis for penalizing voice providers that are not involved in the traffic stimulation schemes by depriving them of the ability to assess lawful originating and terminating access charges.

Furthermore, the Commission should not simply accept AT&T’s assertion that the tandem switching market is competitive in all areas of the country.<sup>9</sup> In many situations, particularly in more rural areas, competitive tandem options do not exist. In such circumstances, connecting through the incumbent LEC remains the sole practical means for non-ILECs to exchange traffic. Moreover, it is unnecessary for the Commission to draw broad conclusions about the state of competition for these services to address the access stimulation problem identified by AT&T.

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<sup>6</sup> For example, AT&T explains that some carriers deny IXC’s the ability to interconnect at end offices and instead require them to purchase tandem transport on a per-mile, per-minute basis. *Id.* at 10, 14.

<sup>7</sup> *Id.* at 7-8.

<sup>8</sup> *Id.* at 15, n.21.

<sup>9</sup> *Id.* at 6-7.

Accordingly, unless AT&T clarifies that its request only covers access charges assessed by access stimulating LECs and their tandem providers, the Commission should deny the petition. The Commission should focus instead on completing its comprehensive reform of the inefficient, historical intercarrier compensation regime. As the Commission explained in the Further Notice portion of the *USF/ICC Transformation Order*, “failure to take action promptly on [all rate] elements could perpetuate inefficiencies, delay the deployment of IP networks and IP-to-IP interconnection, *and maintain opportunities for arbitrage*.”<sup>10</sup> As AT&T correctly notes, these concerns have been realized and “the partial reforms to the intercarrier compensation regime continue to perpetuate inefficient rates, and to allow access arbitrage schemes to flourish.”<sup>11</sup> By moving expeditiously to complete its ICC reforms, the Commission can more effectively eliminate the remaining economic incentives to participate in all ongoing arbitrage schemes, including those targeted by AT&T.

## **II. AT&T’S 8YY FORBEARANCE REQUEST IS NOT SUPPORTED BY MEANINGFUL EVIDENCE AND NOT WARRANTED IN THE ABSENCE OF COMPREHENSIVE REFORM**

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AT&T states that “an unusual and disturbing pattern has emerged with respect to the pricing of toll-free database queries” and that this pattern justifies the forbearance it has requested.<sup>12</sup> In particular, AT&T asserts that (1) there is “a wide variation in the tariffed charges” for these services, and (2) non-tariffed rates offered by wholesale providers are lower and more uniform than the tariffed rates charged by LECs.<sup>13</sup>

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<sup>10</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 18109, ¶ 1297 (emphasis added).

<sup>11</sup> AT&T Petition at 1.

<sup>12</sup> *Id.* at 19.

<sup>13</sup> *Id.*

As a threshold matter, AT&T has not provided evidence that is sufficient to support its request for forbearance with respect to database query charges. The only evidence AT&T provides is a single footnote comparing the rates charged by two LECs affiliated with AT&T with those charged by four unaffiliated LECs.<sup>14</sup> Considering that there are more than a thousand LECs in operation, these six observations, offered with no supplemental analysis, cannot possibly form the basis for a decision to change the current regime governing hundreds of millions of toll-free database queries.

Even if AT&T had provided meaningful evidence that some LECs are imposing unreasonably high charges for toll-free database queries, granting the requested forbearance is not an appropriate solution to that problem. All LECs must make 8YY queries in order to route such calls to IXC's correctly. This service solely benefits the IXC's that are paid to deliver the toll-free traffic to their 8YY customers, but AT&T's forbearance request would relieve these providers of the obligation to compensate LECs for these queries.

AT&T incorrectly suggests such a result is consistent with the rationale underlying the Commission's adoption of bill and keep because both parties to the call benefit and therefore both carriers should recover their costs from their own customers.<sup>15</sup> But that theory does not hold true in the context of toll-free calling because the decision of the called party to market the call as "toll free" eliminates the ability of the originating LEC to recover its costs. To the extent AT&T is suggesting that LECs should offset that cost by increasing their basic local exchange service charges so that AT&T alone can realize significant savings, the Commission would need to give careful consideration to the implications of such a one-sided proposal on end users and

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<sup>14</sup> *Id.* at 19, n. 29.

<sup>15</sup> *Id.* at 21-22.

competition, preferably in the context of the pending Further Notice in the *USF/ICC Transformation* proceeding.

### **CONCLUSION**

For all the reasons explained above, the Commission should complete the ICC reforms started in 2011 in a comprehensive manner, rather than granting piecemeal forbearance as requested by AT&T.

Respectfully submitted,

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